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HOUSE BILL 367 By
Buck

SENATE BILL 713
By Ramsey

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 32; Title 40, Chapter 35 and Title 40, Chapter 14, relative to certain persons charged with or convicted of certain offenses and the expungement of certain records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 32, is amended by adding the following as a new section:

Section____.

(a) As used in this section unless the context otherwise requires:

(1) "Domestic violence offense" means an offense that:

(A) Is classified as a misdemeanor in this state;

(B) Has as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon;
and

(C) Is committed by a:

(i) Current or former spouse, parent, or guardian of the victim;

(ii) Person with whom the victim shares a child in common;

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(iii) Person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or

(iv) Person similarly situated to a spouse, parent, or guardian of the victim.

(2) "Public record" does not include the records described in Tennessee Code Annotated, Section 40-32-101(b).

(b) Notwithstanding any other provision of law to the contrary, a person convicted of a domestic violence offense committed prior to September 30, 1996 may, upon completion of the sentence or period of probation imposed, petition the court in which the conviction occurred for the removal and destruction of all public records relating to such conviction.

(c) Upon receipt of such a petition, the court shall set a hearing date and shall notify the arresting law enforcement officer and the district attorney general who prosecuted the domestic violence offense of the petition and the date of the hearing on the petition. The arresting officer and the district attorney general may appear at the hearing in support of or opposition to the petition or may submit comments in writing for the court's consideration. At the hearing the petitioner may submit any credible evidence in support of the petition.

(d) In deciding whether to grant the person's petition thereby removing and destroying the public records relating to such person's conviction for a domestic violence offense, the court shall consider the following:

(1) The facts surrounding the conviction;

(2) Whether the injury resulted in bodily injury to the victim and if so the extent of such injuries;

(3) The period of time between commission of the offense and the petition;

(4) Any other offense for which the petitioner was convicted or any act for which the petitioner was adjudicated delinquent, if any.

(5) Whether or not the petitioner is still married to or has contact with the victim;

(6) Whether the petitioner received or successfully completed a counseling program relating to domestic violence;

(7) Whether the petitioner was the sole aggressor, the primary aggressor or whether the petitioner and the victim were equally responsible for the conduct resulting in the offense;

(8) Whether the victim initiated the conduct resulting in the offense or materially contributed to the commission of the offense;

(9) Whether the petitioner plead guilty to the domestic violence offense or whether such petitioner was found guilty either by a jury or the court; and

(10) Whether the petitioner was represented by an attorney for the domestic violence offense.

(e) Only one (1) domestic violence offense conviction may be expunged pursuant to this section during the life of the petitioner.

(f) If further proceedings concerning a person who is found guilty or pleads guilty to a domestic violence offense are deferred pursuant to Tennessee Code Annotated, Section 40-35-313, the expungement provisions of subsection (b) of that section shall govern the records of such person rather than the provisions of this section.

(g) If an order expunging a conviction for a domestic violence offense is entered pursuant to this section or Tennessee Code Annotated, Section 40-35-313(b), the petitioner shall not be considered, as to the expunged offense, to

have committed a “misdemeanor crime of domestic violence” as that term is defined in 18 United States Code, Section 921(a).

(h) If a petition filed pursuant to this section is granted, the petitioner shall be required to pay the cost of removing and destroying the public records relating to the petitioner’s conviction for a domestic violence offense provided such cost does not exceed twenty-five dollars (\$25.00).

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 14, Part 1, is amended by adding the following as a new section:

Section____.

(a) As used in this section “Domestic violence offense” means an offense that:

(A) Is classified as a misdemeanor in this state;

(B) Has as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon;
and

(C) Is committed by a:

(i) Current or former spouse, parent, or guardian of the victim;

(ii) Person with whom the victim shares a child in common;

(iii) Person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or

(iv) Person similarly situated to a spouse, parent, or guardian of the victim.

(b) Before the court accepts the guilty plea of a defendant charged with a domestic violence offense, it shall inform the defendant

that under federal law it is an offense punishable by up to ten (10) years imprisonment and forfeiture of the firearm for a person convicted of a domestic violence offense to possess or receive a firearm. After so informing the defendant, the court may accept the plea of guilty if the defendant clearly states on the record that the defendant is aware of the consequences of a conviction for a domestic violence offense and still wishes to enter a plea of guilty.

(c) If a defendant is not represented by an attorney but wishes to proceed to the trial of a charge of committing a domestic violence offense, the court shall also inform the defendant of the consequences of a conviction for a domestic violence offense as provided in subsection (b) of this section.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.